



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WAGGONER GARR  
ATTORNEY GENERAL**

June 14, 1963

Dr. J. E. Peavy  
Commissioner of Health  
State Department of Health  
Austin, Texas

Opinion No. C-98

Re: Can a retail vendor of bedding in Texas legally sell items of bedding purchased from a wholesaler located outside Texas who has purchased the bedding from a manufacturer outside of Texas who does not hold the permit required by Article 4476a, V. C.S.?

Dear Dr. Peavy:

You have requested the opinion of this office as to whether a retail vendor of bedding in Texas may legally sell items of bedding purchased from a wholesaler located outside Texas who has purchased the bedding from a manufacturer outside of Texas who does not hold the permit required by Article 4476a, Vernon's Civil Statutes (the Texas Bedding Law).

Article 4476a, Vernon's Civil Statutes, reads in pertinent part as follows:

"Section 5(e) The Department, through its authorized representative, shall have authority to place 'Off-Sale' any article of bedding or material which is offered for sale, or which could be offered for sale, in violation of this Act. . . ."

"Section 7(a). No person shall manufacture, renovate, sell or lease, or have in his possession with intent to sell or lease in the State of Texas, any bedding covered by the provisions of this Act, unless there be affixed to the tag required

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by this Act by the person manufacturing, renovating, selling or leasing the same, an adhesive stamp prepared and issued by this Department."

The tag referred to in Section 7(a) above is a label which the Texas Bedding Law requires to be affixed by the manufacturer of the bedding. The tag must have the manufacturer's permit number stamped thereon, in addition to certain other information. It is clear that, if a foreign manufacturer has not obtained a permit, any tag affixed to the bedding will not carry the necessary permit number, and will not comply with the permit provisions of the Texas Bedding Law.

By the quoted provisions of Section 5(e), supra, the State Department of Health has authority to place "Off-Sale" any bedding that does not comply with the provisions of this Act. That would appear to apply to bedding offered for sale by retailers in this State, if such bedding does not carry the necessary tag and permit number. It is equally true that a Texas retailer could not legally sell bedding that does not carry the required tag, for the reason that Section 7(a), supra, requires that the retailer affix a stamp to the required tag. If the required tag is not present, no stamp may properly be affixed. Without the proper stamp, any sale of bedding covered by the provisions of Article 4476a would be improper, and exposes the seller to the penalties imposed under the Act.

#### S U M M A R Y

A retail vendor of bedding in Texas may not legally sell items of bedding purchased from a wholesaler located outside of Texas who has purchased the bedding from a manufacturer outside of Texas who does not hold the permit required by Article 4476a, V.C.D.

Yours very truly,

WAGGONER CARR  
Attorney General

By *Malcolm L. Quick*  
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Assistant

MLQ:ms

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APPROVED:

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